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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68017; File No. SR-NYSE-2012-47)

October 9, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.02 of the New York Stock Exchange Listed Company Manual Regarding Waivers for Certain Listing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 25, 2012, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the New York Stock Exchange Listed Company Manual.

The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Listed Company Manual and to implement the proposed changes immediately upon filing.

The Exchange proposes to amend Section 902.02 of the Listed Company Manual, which currently provides, in part, that Listing Fees are waived for issuers (i) listing following emergence from bankruptcy; (ii) listing a class of stock that is not listed on a national securities exchange but is registered under the Securities Exchange Act of 1934 (the "Act"); or (iii) transferring the listing of any class of equity securities, any structured product or any closed-end fund from any other national securities exchange.

The Exchange proposes to specify that waiver (i) would only be applicable to an issuer that is listing within 36 months following emergence from bankruptcy and that has not had a security listed on a national securities exchange during such period. In addition, the Exchange proposes to specify that waiver (ii) would only be applicable to an issuer that is relisting a class of stock that is registered under the Act that was delisted from a national securities exchange and only if such delisting was (a) within the previous 12 calendar months, and (b) due to the issuer's failure to file a required periodic financial report with the Commission or other appropriate regulatory authority.<sup>3</sup> In addition to the substantive changes proposed herein for Section 902.02 of the Listed Company Manual, the Exchange also proposes certain non-substantive changes.<sup>4</sup>

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<sup>3</sup> As a result, this waiver would no longer apply to an issuer listing a class of stock that is registered under the Act and (i) was delisted from a national securities exchange within

The Exchange does not expect the financial impact of this proposed rule change to be material in terms of the level of Listing Fees collected from issuers on the Exchange.

Specifically, the Exchange anticipates that only a very limited number of issuers will be qualified and seek to list on the Exchange that are eligible to qualify for the waivers, as amended.

Accordingly, the Exchange believes that the proposed rule change will not impact the

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the previous 12 calendar months for a non-financial-reporting reason, (ii) was not listed on a national securities exchange within the previous 12 calendar months, or (iii) is being listed on a national securities exchange for the first time. The Exchange notes that the NASDAQ Stock Market LLC (“NASDAQ”) similarly waives the “entry” and “application” fees for issuers that were suspended and/or delisted from NASDAQ solely for their failure to file a required periodic financial report with the Commission or other appropriate regulatory authority. See NASDAQ IM-5900-5 (Waiver of Fees upon Relisting for Companies Removed for Late Filings). The Exchange is not proposing any changes to waiver (iii) to Listing Fees.

<sup>4</sup> First, the Exchange proposes to remove obsolete text that provides that, with retroactive effect from January 1, 2008, issuers transferring the listing of their primary class of common shares from NYSE Alternext US (which is now known as NYSE MKT LLC (“NYSE MKT”)) are not required to pay Annual Fees with respect to that primary class of common shares or any other class of securities transferred in conjunction therewith for the remainder of the calendar year in which the transfer occurs. Instead, the Exchange proposes to include the reference to NYSE MKT with an existing reference to NYSE Arca, Inc. (“NYSE Arca”) that similarly provides that issuers transferring the listing of their primary class of common shares from NYSE Arca are not required to pay Annual Fees with respect to that primary class of common shares or any other class of securities transferred in conjunction therewith for the remainder of the calendar year in which the transfer occurs. The Exchange proposes to relocate the combined NYSE Arca and NYSE MKT reference under the “Annual Fees” subheading of Section 902.02 of the Listed Company Manual, where it is more appropriate. Second, the Exchange proposes that, instead of using an asterisk to mark the text that provides that none of the Listing Fee waivers are applicable to the transfer of any class of securities if the issuer’s primary class of common stock remains listed on another national securities exchange, such text would be moved within the main body of text describing the waivers. Additionally, “transfer” would be changed to “listing,” which would more accurately describe the process. Finally, the Exchange proposes to correct a cross-reference to the one-time special charge payable in connection with the listing of any new class of common shares. The reference currently states that the special charge is \$37,500, but the actual amount is \$50,000, as provided in Section 902.03, under “Listing Fee Schedule.” See Securities Exchange Act Release No. 60868 (October 22, 2009), 74 FR 55883 (October 29, 2009) (SR-NYSE-2009-83).

Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to waive the Listing Fees for an issuer within 36 months following emergence from bankruptcy, so long as such issuer has not had a security listed on a national securities exchange during such period, because this will incentivize such issuers to list their security on the Exchange, which will result in increased transparency and liquidity with respect to the issuer's security, thereby benefiting investors. In this regard, the Exchange notes that the issuer, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and standards that the Exchange requires of issuers listed on the Exchange. Accordingly, the Exchange believes that it is in the public's interest, and the interest of the issuer, to provide an opportunity for the increased transparency and liquidity that is attendant with listing on the Exchange and therefore that it is reasonable to waive the Listing Fees for such issuers. The Exchange believes that the number of additional issuers that will qualify for this waiver, as proposed, will be limited. The Exchange also believes that limiting the waiver to 36 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

sufficient for the issuer to proceed with its reorganization and meet the Exchange's qualifications for listing.

The Exchange also believes that it is reasonable to limit the waiver to issuers that have emerged from bankruptcy but have not yet had a security listed on a national securities exchange during such period because, if an issuer has already listed its security post-emergence, it has already exposed itself to the requirements and transparency associated with listing on a national securities exchange, which is what the Exchange is incentivizing by waiving the Listing Fees. The Exchange also believes that this is equitable and not unfairly discriminatory because the goal of the waiver is to incentivize listing, and the transparency and public benefits (e.g., increased liquidity) that is attendant therewith. Accordingly, these goals would already be achieved for an issuer that has already listed on another national securities exchange post-emergence, and to waive the Listing Fees would therefore be inconsistent with the waiver's purpose.

The Exchange also believes that it is reasonable to provide a waiver of the Listing Fees to an issuer listing a class of stock that is registered under the Act that was delisted from a national securities exchange if such delisting was (a) within the previous 12 calendar months, and (b) due to the issuer's failure to file a required periodic financial report with the Commission or other appropriate regulatory authority. When the current Listing Fee waiver was added, the Exchange anticipated that a significant percentage of potential new listings of companies that had a registered class of common stock but that were not currently listed on a national securities exchange would relate to formerly listed companies that were delisted as a result of a failure to timely file annual reports with the Commission.<sup>7</sup> The Exchange anticipated that these would be companies that were otherwise in good standing with the Exchange or another national securities

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<sup>7</sup> See Securities Exchange Act Release No. 55742 (May 10, 2007), 72 FR 27893 (May 17, 2007) (SR-NYSE-2007-19).

exchange, but that fell behind on their Act reporting because their auditors or the Commission required restatements of their financial statements and that these companies would relist on the Exchange (or another national securities exchange) as soon as their filings were up to date.<sup>8</sup> When proposed, the Exchange believed that it was appropriate to waive initial listing fees for these companies and that such a waiver did not constitute an inequitable or unfairly discriminatory allocation of fees because such companies would have previously paid initial listing fees to the Exchange or another national securities exchange, and that to make them pay these fees again would further penalize them unnecessarily.<sup>9</sup>

The Exchange continues to believe that a waiver for issuers that were delisted for financial reporting reasons is reasonable because, except for the non-compliance with the financial reporting requirement, such issuers would otherwise be in good standing at the time of delisting from a listing standards perspective and would have already paid a fee for listing on the Exchange or another national securities exchange. The Exchange also believes that limiting the waiver to 12 months after delisting is reasonable because the waiver would apply to issuers that were delisted within a relatively recent time frame.

The Exchange noted, when the current waivers to the Listing Fee were adopted, that there could be an initial listing on the Exchange of a company that was trading in the over-the-counter market immediately prior to listing and that was not previously delisted as a result of a failure to timely file annual reports with the Commission.<sup>10</sup> The Exchange believed that very few of these

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at n. 5.

companies could meet the Exchange's listing requirements and, therefore, the Exchange expected the number of such listings and the related loss of fee revenue to be immaterial.<sup>11</sup>

The Exchange believes that the changes proposed to this aspect of the waiver, such that it would no longer apply to issuers that were delisted for reasons other than financial reporting, is equitable and not unfairly discriminatory because these other issuers would not have been in good standing at the time of delisting from a listing standards perspective and such lack of good standing would be due to reasons other than for financial reporting. Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to charge Listing Fees to issuers that are registered under the Act but not previously listed on a national securities exchange because such issuers would not have previously paid listing fees.

The Exchange also believes that this aspect of the proposed change is equitable and not unfairly discriminatory because, in addition to applying equally to all issuers whose securities are listed on the Exchange, it would differentiate between those issuers whose securities are delisted solely for financial reporting reasons and those issuers whose securities were delisted for other reasons or were not previously listed on a national securities exchange. In this regard, the Exchange believes that these issuers would not be unfairly penalized if they are required to pay Listing Fees.

Overall, the Exchange believes that instances of these waivers being granted to issuers that apply to list on the Exchange will be relatively rare. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed waivers and therefore does not believe that the proposed waivers would in any way

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<sup>11</sup> Id. In this regard, the Exchange notes that there have been a number of such issuances. For example, to date in 2012 five issuers have availed themselves of this waiver by listing securities on the Exchange that were not previously listed on a national securities exchange and, therefore, had not previously paid initial listing fees.

negatively affect its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers.

Additionally, the Exchange believes that the non-substantive changes that are proposed, which are technical and conforming changes, are reasonable because they will ensure that the proposed substantive changes are incorporated in a clear and accurate manner. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Listed Company Manual.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).



may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-47 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2012-47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between 10:00 a.m. and 3:00 p.m.. Copies of the filing will also be available for website viewing and printing at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSE-2012-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).